**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION NO. 271 OF 2006**

M/s.Harinagar Sugar Mills Ltd. ... Petitioner.

V/s.

Kamgar Suraksha Sangh & Ors. ... Respondent.

**WITH**

**WRIT PETITION NO. 275 OF 2006**

M/s.Shangrila Food Harinagar Sugar Mills Ltd. ... Petitioner.

V/s.

Kamgar Suraksha Sangh & Ors. ... Respondent.

P.H.Purav with V.P.Sawant and Anjali Purav for the petitioner.

Arshad Shaikh i/b. V.M.Parkar for respondent No.1.

**CORAM : V.C.DAGA, J.**

**DATED : 27th February, 2006.**

**P.C. :**

These petitions, involving identical facts and common grounds of challenge, are directed against the common interim order (below Exh.2) in Complaint (ULP) Nos.525/2005 and 526/2005 passed by the Industrial Court, Mumbai directing the petitioner- employer to pay bonus ex-gratia as declared on 28th October, 2005 on the terms and conditions mentioned in the operative part of the order, details of which are not necessary for disposal of these petitions.

**Rival Submissions :**

2. The learned counsel for the petitioner-employer urged three submission- (i) that the Industrial Court has erred in holding, prima facie; unfair labour practice on the part of the petitioner and dissecting the terms and conditions dated 27th October, 2005; (ii) that undertaking being part of the settlement arrived at in a package deal should be accepted or rejected as a whole; (iii) that if the settlement has been arrived at and accepted by the majority workers with the eyes open; it has to be presumed that the settlement and the terms thereof are just and fair. It is not liable to be ignored merely because small number of workers are not party to settlement or that they are refusing to accept some

of the terms thereof. In other words, terms of the settlement cannot be weighed in a golden scale. A question whether or not the terms of settlement are just and fair should be answered on the principles laid down by the Apex Court in the case of ***Herbertsons Ltd. v. Their Workmen***, AIR 1977 SC 322 = SCLJ (Vol.13) pg.203 and ***M/s. Tata Engineering and Locomotive Company Ltd. v. Their Workmen***, SCLJ (Vol.7) pg. 623 = 1981 (43) FLR 354.

3. Per contra, Mr.Shaikh, learned counsel appearing for respondent No.1 submits that the following clauses of the settlement are, prima facie; unfair. They read as under:

> 2(a):- All acts of workmen will be directed in such of way to avoid existence of multiplicity of the unions in the companies establishment and they shall endeavour to maintain peaceful atmosphere in the factory.
>
> 2(b):- The workmen shall not confine the production/packing output only to the standard norms but do working as per their maximum capacity.

4. Mr.Shaikh submits that according to the view taken by the Industrial Court in the impugned order, the Court, prima facie; found that it

prohibits multiplicity of unions which law does not prohibit. He, thus, submits that the view taken by the Industrial Court in the impugned order is a reasonable and possible view, as such this Court, not being a court of appeal; in exercise of its writ jurisdiction under Articles 226 and 227 should not interfere with the impugned order.

**Consideration :**

5. Having heard rival parties, the Industrial Court has, prima facie; come to the conclusion that the terms set out in para-4 of the impugned order are unfair, as such forcing the workmen to sign undertaking, would be an unfair labour practice, prima facie; falling within the sweep of Item 5 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1947 (“MRTU & PULP Act” for short).

6. In the wake of the above finding, the Industrial Court by interim order directed payment of bonus exgratia amount, as per the settlement, without insisting upon execution of the undertaking by the workers/ complainants. The details of the claim allowed are to be found in the operative part of the impugned order.

7. The view taken by the Tribunal, in my opinion, is a possible view. It has a backing of

judgment of the learned single Judge of this Court in the case of *Benet Colmen v. Narsaiya A. Sawant*, 2002 (2) CLR 335. By no stretch of imagination, the view taken by the Court below could be said to be a perverse view. If two views are possible and one view is adopted by the Court while granting discretionary interim relief, then it can hardly be inferred as perverse view. Such a view cannot be interfered with in the writ jurisdiction of this Court.

8. The writ Court is not expected to act as an appellate Court. It cannot substitute its view in place of a reasonable possible view taken by the Court below. Reliance placed on the judgments of the Apex Court in the case of ***Herbertsons Ltd. v. Their Workmen***, and ***M/s. Tata Engineering and Locomotive Company Ltd. v. Their Workmen*** **Herbert Sons Ltd. v. Their Workmen** (by both parties) is misplaced. They are distinguishable on facts. In those cases positive findings were recorded after examining the terms and conditions of the settlement that those terms and conditions of the settlement were just and fair. No such finding is to be found in the impugned order. On the contrary, the prima facie; finding is otherwise. As such no fault can be found with the view taken by the Industrial Court at this stage.

9. The complaints are yet to be tried on

merits. It would not be proper on the part of this Court to express any opinion with regard to the merits of the contentions raised by the rival parties. Primal facie; this Court being a writ Court would be well within its jurisdiction; if it finds establishment of three ingredients necessary for grant of interim relief, viz. (i) whether the complainants have made out a prima facie case; (ii) whether the complainants would suffer irreparable injury in absence of interim relief; and (iii) whether the balance convenience lies in their favour. The burden to prove these three necessities lies on the person seeking interim relief, which, in my opinion, has been discharged by the complainants/ respondents herein.

10. Without going into the niceties of the submissions made by the rial parties and without expressing any opinion on the merits of the rival contentions, I am of the opinion that prima facie; case has been established by the respondents-complainants and balance of convenience also lies in their favour. Once undertaking is executed by the complainants, then it would not be possible for them to resile from the said undertaking. Therefore, the injury which they would suffer by executing the undertaking would be substantial. On the contrary, if no undertaking is insisted upon or furnished by the workmen, the employer will not suffer any mischief or injury. The clock can always be put back by the Industrial Court at the

time of final disposal of the complaints. To enable the Industrial Court to put the clock back at the time of final disposal of the complaints, (on being asked) the respondents agreed to give undertakings on oath and have, actually, furnished the same to this Court stating therein that in the event the complaints are decided against them, they will abide by the undertakings signed by them as appended to settlement dated 27th October, 2005, however, without prejudice to their rights and contentions including the right to approach the higher Court against the adverse order. The undertakings furnished by each of the respondents/ complainants are taken on record.

11. Since I am concurring with the view taken by both the Court below, I do not think it necessary for me to reiterate the same reasons once again. For the reasons recorded in the impugned order; in addition to what is stated in this order, the petitions are liable to be dismissed.

12. In the result, both petitions are dismissed in limine with no order as to costs.

**(V.C.DAGA, J.)**